

AMENDED IN SENATE JUNE 26, 2012

AMENDED IN ASSEMBLY APRIL 18, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2466

Introduced by Assembly Member Blumenfield

February 24, 2012

An act to add Section 236.6 to the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

AB 2466, as amended, Blumenfield. Human trafficking: seizure of assets.

Existing law makes it a felony, generally known as human trafficking, to deprive or violate the personal liberty of another with the intent to effect or maintain a felony violation of, among other crimes, pimping, pandering, and abducting a minor for the purpose of prostitution. Under existing law, the crime of human trafficking is punishable by a fine not to exceed \$1,000 or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. Existing law requires the court to order a person who is convicted of a crime to pay a restitution fine, as prescribed, and restitution to the victim or victims for the full amount of economic loss, unless the court finds compelling and extraordinary reasons for not doing so and states them on the record. Additionally, under existing law, real property used to facilitate the commission of human trafficking may be determined to be a nuisance and remedies may be imposed against that property.

This bill would authorize the prosecuting agency, at the same time as the filing of a complaint or indictment charging human trafficking, to file a petition for protective relief necessary to preserve property or assets that could be used to pay for remedies relating to human trafficking, including, but not limited to, restitution and fines. The bill would specify the process by which a preliminary injunction, temporary restraining order, or sale of property or assets may be ordered *and the process for distribution of the assets if the defendant is convicted*.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 236.6 is added to the Penal Code, to read:
2 236.6. (a) To prevent dissipation or secreting of assets or
3 property, the prosecuting agency may, at the same time as or
4 subsequent to the filing of a complaint or indictment charging
5 human trafficking under Section 236.1, file a petition with the
6 criminal division of the superior court of the county in which the
7 accusatory pleading was filed, seeking a temporary restraining
8 order, preliminary injunction, the appointment of a receiver, or
9 any other protective relief necessary to preserve the property or
10 assets. The filing of the petition shall start a proceeding that shall
11 be pendent to the criminal proceeding and maintained solely to
12 effect the remedies available for this crime, including, but not
13 limited to, payment of restitution and payment of fines. The
14 proceeding shall not be subject to or governed by the provisions
15 of the Civil Discovery Act as set forth in Title 4 (commencing
16 with Section 2016.010) of Part 4 of the Code of Civil Procedure.
17 The petition shall allege that the defendant has been charged with
18 human trafficking under Section 236.1 and shall identify that
19 criminal proceeding and the assets and property to be affected by
20 an order issued pursuant to this section.
21 (b) The prosecuting agency shall, by personal service or
22 registered mail, provide notice of the petition to every person who
23 may have an interest in the property specified in the petition.
24 Additionally, the notice shall be published for at least three
25 successive weeks in a newspaper of general circulation in the
26 county where the property affected by the order is located. The
27 notice shall state that any interested person may file a verified

1 claim with the superior court stating the nature and amount of his
2 or her claimed interest. The notice shall set forth the time within
3 which a claim of interest in the protected property shall be filed.

4 (c) If the property to be preserved is real property, the
5 prosecuting agency shall record, at the time of filing the petition,
6 a lis pendens in each county in which the real property is situated
7 that specifically identifies the property by legal description, the
8 name of the owner of record, as shown on the latest equalized
9 assessment roll, and the assessor's parcel number.

10 (d) If the property to be preserved consists of assets under the
11 control of a banking or financial institution, the prosecuting agency,
12 at the time of filing the petition, may obtain an order from the court
13 directing the banking or financial institution to immediately
14 disclose the account numbers and value of the assets of the accused
15 held by the banking or financial institution. The prosecuting agency
16 shall file a supplemental petition, specifically identifying which
17 banking or financial institution accounts shall be subject to a
18 temporary restraining order, preliminary injunction, or other
19 protective remedy.

20 (e) A person claiming an interest in the protected property or
21 assets may, at any time within 30 days from the date of the first
22 publication of the notice of the petition, or within 30 days after
23 receipt of actual notice, whichever is later, file with the superior
24 court of the county in which the action is pending a verified claim
25 stating the nature and amount of his or her interest in the property
26 or assets. A verified copy of the claim shall be served by the
27 claimant on the Attorney General or district attorney, as
28 appropriate.

29 ~~(f) The imposition of fines and restitution shall be determined~~
30 ~~by the superior court in which the underlying criminal offense is~~
31 ~~sentenced. A judge who is assigned to the criminal division of the~~
32 ~~superior court in the county where the petition is filed may issue~~
33 ~~a temporary restraining order in conjunction with, or subsequent~~
34 ~~to, the filing of an allegation pursuant to this section. A subsequent~~
35 ~~hearing on the petition shall also be heard by a judge assigned to~~
36 ~~the criminal division of the superior court in the county in which~~
37 ~~the petition is filed. At the time of the filing of an information or~~
38 ~~indictment in the underlying criminal case, a subsequent hearing~~
39 ~~on the petition shall be conducted by the superior court judge~~
40 ~~assigned to the underlying criminal case.~~

1 ~~(g)~~

2 (f) Concurrent with or subsequent to the filing of the petition,
3 the prosecuting agency may move the superior court for, and the
4 superior court may issue, any of the following pendente lite orders
5 to preserve the status quo of the property or assets alleged in the
6 petition:

7 (1) An injunction to restrain any person from transferring,
8 encumbering, hypothecating, or otherwise disposing of the property
9 or assets.

10 (2) Appointment of a receiver to take possession of, care for,
11 manage, and operate the assets and properties so that they may be
12 maintained and preserved. The court may order that a receiver
13 appointed pursuant to this section shall be compensated for all
14 reasonable expenditures made or incurred by him or her in
15 connection with the possession, care, management, and operation
16 of property or assets that are subject to the provisions of this
17 section.

18 (3) Requiring a bond or other undertaking, in lieu of other
19 orders, of a value sufficient to ensure the satisfaction of restitution
20 and fines imposed pursuant to Section 236.1.

21 ~~(h)~~

22 (g) The following procedures shall be followed in processing
23 the petition:

24 (1) No preliminary injunction shall be granted or receiver
25 appointed without notice to the interested parties and a hearing to
26 determine that the order is necessary to preserve the property or
27 assets, pending the outcome of the criminal proceedings. However,
28 a temporary restraining order may be issued pending that hearing
29 pursuant to the provisions of Section 527 of the Code of Civil
30 Procedure. The temporary restraining order may be based upon
31 the sworn declaration of a peace officer with personal knowledge
32 of the criminal investigation that establishes probable cause to
33 believe that human trafficking has taken place and that the amount
34 of restitution and fines established pursuant to subdivision (f)
35 exceeds or equals the worth of the property or assets subject to the
36 temporary restraining order. The declaration may include the
37 hearsay statements of witnesses to establish the necessary facts.
38 The temporary restraining order may be issued without notice upon
39 a showing of good cause to the court.

1 (2) The defendant, or a person who has filed a verified claim,
2 shall have the right to have the court conduct an order to show
3 cause hearing within 10 days of the service of the request for a
4 hearing upon the prosecuting agency, in order to determine whether
5 the temporary restraining order should remain in effect, whether
6 relief should be granted from a lis pendens recorded pursuant to
7 subdivision (c), or whether an existing order should be modified
8 in the interests of justice. Upon a showing of good cause, the
9 hearing shall be held within two days of the service of the request
10 for a hearing upon the prosecuting agency.

11 (3) In determining whether to issue a preliminary injunction or
12 temporary restraining order in a proceeding brought by a
13 prosecuting agency in conjunction with or subsequent to the filing
14 of an allegation pursuant to this section, the court has the discretion
15 to consider any matter that it deems reliable and appropriate,
16 including hearsay statements, in order to reach a just and equitable
17 decision. The court shall weigh the relative degree of certainty of
18 the outcome on the merits and the consequences to each of the
19 parties of granting the interim relief. If the prosecution is likely to
20 prevail on the merits and the risk of the dissipation of assets
21 outweighs the potential harm to the defendants and the interested
22 parties, the court shall grant injunctive relief. The court shall give
23 significant weight to the following factors:

24 (A) The public interest in preserving the property or assets
25 pendente lite.

26 (B) The difficulty of preserving the property or assets pendente
27 lite where the underlying alleged crimes involve human trafficking.

28 (C) The fact that the requested relief is being sought by a public
29 prosecutor on behalf of alleged victims of human trafficking.

30 (D) The likelihood that substantial public harm has occurred
31 where the human trafficking is alleged to have been committed.

32 (E) The significant public interest involved in compensating
33 victims of human trafficking and paying court-imposed restitution
34 and fines.

35 (4) The court, in making its orders, may consider a defendant's
36 request for the release of a portion of the property affected by this
37 section in order to pay reasonable legal fees in connection with
38 the criminal proceeding, necessary and appropriate living expenses
39 pending trial and sentencing, and for the purpose of posting bail.
40 The court shall weigh the needs of the public to retain the property

1 against the needs of the defendant to a portion of the property. The
2 court shall consider the factors listed in paragraph (3) prior to
3 making an order releasing property for these purposes.

4 (5) The court, in making its orders, shall seek to protect the
5 interests of innocent third ~~persons~~ *parties*, including an innocent
6 spouse, who were not involved in the commission of criminal
7 activity.

8 (6) *The orders shall be no more extensive than necessary to*
9 *effect the remedies available for the crime. In determining the*
10 *amount of property to be held, the court shall ascertain the amount*
11 *of fines that are assessed for a violation of this chapter and the*
12 *amount of possible of restitution.*

13 ~~(6)~~

14 (7) A petition filed pursuant to this section is part of the criminal
15 proceedings for purposes of appointment of counsel and shall be
16 assigned to the criminal division of the superior court of the county
17 in which the accusatory pleading was filed.

18 ~~(7)~~

19 (8) Based upon a noticed motion brought by the receiver
20 appointed pursuant to paragraph (2) of subdivision ~~(g)~~ *(f)*, the court
21 may order an interlocutory sale of property named in the petition
22 when the property is liable to perish, to waste, or to be significantly
23 reduced in value, or when the expenses of maintaining the property
24 are disproportionate to the value of the property. The proceeds of
25 the interlocutory sale shall be deposited with the court or as
26 directed by the court pending determination of the proceeding
27 pursuant to this section.

28 ~~(8)~~

29 (9) The court may make any orders that are necessary to preserve
30 the continuing viability of a lawful business enterprise that is
31 affected by the issuance of a temporary restraining order or
32 preliminary injunction issued pursuant to this section.

33 ~~(9)~~

34 (10) In making its orders, the court shall seek to prevent the
35 property or asset subject to a temporary restraining order or
36 preliminary injunction from perishing, spoiling, going to waste,
37 or otherwise being significantly reduced in value. Where the
38 potential for diminution in value exists, the court shall appoint a
39 receiver to dispose of or otherwise protect the value of the property
40 or asset.

~~(10)~~

(11) A preservation order shall not be issued against an asset of a business that is not likely to be dissipated and that may be subject to levy or attachment to meet the purposes of this section.

(h) If the allegation of human trafficking is dismissed or found by the trier of fact to be untrue, a preliminary injunction or temporary restraining order issued pursuant to this section shall be dissolved. If a jury is the trier of fact, and the jury is unable to reach a unanimous verdict, the court shall have the discretion to continue or dissolve all or a portion of the preliminary injunction or temporary restraining order based upon the interests of justice. However, if the prosecuting agency elects not to retry the case, a preliminary injunction or temporary restraining order issued pursuant to this section shall be dissolved.

(i) (1) (A) If the defendant is convicted of human trafficking, the trial judge shall continue the preliminary injunction or temporary restraining order until the date of the criminal sentencing and shall make a finding at that time as to what portion, if any, of the property or assets subject to the preliminary injunction or temporary restraining order shall be levied upon to pay fines and restitution to victims of the crime. The order imposing fines and restitution may exceed the total worth of the property or assets subjected to the preliminary injunction or temporary restraining order. The court may order the immediate transfer of the property or assets to satisfy a restitution order issued pursuant to Section 1202.4 and a fine imposed pursuant to this chapter.

(B) Additionally, the court shall order the defendant to make full restitution to the victim or to make restitution to the victim based on his or her ability to pay, as defined in subdivision (b) of Section 1203.1b.

(C) If the execution of judgment is stayed pending an appeal of an order of the superior court pursuant to this section, the preliminary injunction or temporary restraining order shall be maintained in full force and effect during the pendency of the appellate period.

(2) The order imposing fines and restitution shall not affect the interest in real property of a third party that was acquired prior to the recording of the lis pendens, unless the property was obtained from the defendant other than as a bona fide purchaser for value. If any assets or property affected by this section are

1 *subject to a valid lien, mortgage, security interest, or interest under*
2 *a conditional sales contract and the amount due to the holder of*
3 *the lien, mortgage, interest, or contract is less than the appraised*
4 *value of the property, that person may pay to the state or the local*
5 *government that initiated the proceeding the amount of the*
6 *difference between the appraised value of the property and the*
7 *amount of the lien, mortgage, security interest, or interest under*
8 *a conditional sales contract. Upon that payment, the state or local*
9 *entity shall relinquish all claims to the property. If the holder of*
10 *the interest elects not to make that payment to the state or local*
11 *governmental entity, the interest in the property shall be deemed*
12 *transferred to the state or local governmental entity and any indicia*
13 *of ownership of the property shall be confirmed in the state or*
14 *local governmental entity. The appraised value shall be determined*
15 *as of the date judgment is entered either by agreement between*
16 *the holder of the lien, mortgage, security interest, or interest under*
17 *a conditional sales contract and the governmental entity involved*
18 *or, if they cannot agree, then by a court-appointed appraiser for*
19 *the county in which the action is brought. A person holding a valid*
20 *lien, mortgage, security interest, or interest under a conditional*
21 *sales contract shall be paid the appraised value of his or her*
22 *interest.*

23 *(3) In making its final order, the court shall seek to protect the*
24 *legitimately acquired interests of innocent third persons, including*
25 *an innocent spouse, who were not involved in the commission of*
26 *criminal activity.*

27 *(j) In all cases where property is to be levied upon pursuant to*
28 *this section, a receiver appointed by the court shall be empowered*
29 *to liquidate all property or assets, which shall be distributed in*
30 *the following order of priority:*

31 *(1) To the receiver, or court-appointed appraiser, for all*
32 *reasonable expenditures made or incurred by him or her in*
33 *connection with the sale of the property or liquidation of assets,*
34 *including all reasonable expenditures for necessary repairs,*
35 *storage, or transportation of property levied upon under this*
36 *section.*

37 *(2) To a holder of a valid lien, mortgage, or security interest,*
38 *up to the amount of his or her interest in the property or proceeds.*

1 (3) *To a victim as restitution for human trafficking that was*
2 *alleged in the accusatory pleading and that was proven by the*
3 *prosecution.*

4 (4) *For payment of a fine imposed. The proceeds obtained in*
5 *payment of a fine shall be paid to the treasurer of the county in*
6 *which the judgment was entered or, if the action was undertaken*
7 *by the Attorney General, to the Treasurer for deposit in the General*
8 *Fund.*

O